

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DECERCHIO, LLC., d/b/a INDUSTRI, a
Michigan limited liability company

Plaintiff,

v.

USDC Case No.
Hon.

INTRASTATE DISTRIBUTORS, INC., a
Michigan corporation,

Defendant.

Constantine N. Kallas P28532
Joseph Fazi P73143
kallas & henk pc
Attorney for Plaintiff
43902 Woodward Ave., Ste. 200
Bloomfield Hills MI 48302
(248) 335-5450 ext. 201

COMPLAINT AND DEMAND FOR JURY TRIAL

There is no pending or resolved matters on file in the United States District Court between these parties or other parties arising out of the same transaction or occurrence alleged in the Complaint.

NOW COMES Plaintiff, DECERCHIO, LLC, by and through its attorneys, **kallas & henk pc**, and for its Complaint, states as follows:

PARTIES AND JURISDICTION OF COURT

1. Plaintiff, DECERCHIO, LLC, doing business as INDUSTRI, is a Michigan limited liability company, (hereinafter "INDUSTRI") authorized to do business in the State of Michigan, and conducting business in Oakland County, Michigan.

2. Defendant, INTRASTATE DISTRIBUTORS, INC., is a Michigan corporation, with its registered address at 6400 E. Eight Mile Road, Detroit, MI, and conducts a principal part of its business in the Oakland County, Michigan, registered agent Thamer Dabish.

3. Jurisdiction is properly vested in this Court pursuant to 28 USC § 1338 and 28 USC § 1400.

COMMON ALLEGATIONS

4. On or about May 7, 2014, Defendant, INTRASTATE DISTRIBUTORS, INC., by and through their agent, Tim Dabish, met with representatives of Plaintiff, INDUSTRI, regarding a potential advertising campaign for Defendant, INTRASTATE DISTRIBUTORS, INC., to market Towne Club soda.

5. Thereafter, employees, representatives and agents of INDUSTRI, developed a prospective advertising campaign for INTRASTATE DISTRIBUTORS, INC., to market Towne Club soda. Included in that advertising campaign were illustrations of billboard advertisements depicting the Towne Club soda bottle at iconic Detroit landmarks and marketing the beverage as “Detroit Originals”.

6. On or about July 14, 2014, employees, representatives, and agents of INDUSTRI, met with Tim Dabish, a representative of INTRASTATE DISTRIBUTORS, INC, and pitched an advertising billboard campaign marketing Towne Club which included the “Detroit Originals” theme depicting Towne Club soda bottles at iconic Detroit landmarks.

7. At the same July 14, 2014, meeting, employees, representatives, and agents of Industri showed Tim Dabish printed graphic billboard ideas that they developed and Mr. Dabish was provided a copy to leave the meeting with.

8. On August 7, 2014, Tim Dabish, representative of INTRASTATE DISTRIBUTORS, INC., sent an email to Thomas Stanis and John DeCerchio, employees of INDUSTRI, offering to pay Two Thousand (\$2,000.00) Dollars to use the billboard advertisements images developed by INDUSTRI.

9. On August 7, 2014, Thomas Stanis, employee of INDUSTRI, responded to Tim Dabish’s inquiry and requested Tim Dabish’s availability to meet and discuss the matter.

10. Despite repeated attempts by employees of INDUSTRI, a meeting was never held between INDUSTRI employees and Tim Dabish or any member of INTRASTATE DISTRIBUTORS, INC., regarding the use of the INDUSTRI developed images and ideas for any advertising campaign.

11. Beginning in approximately May, 2016, Defendant, INTRASTATE DISTRIBUTORS, INC., utilized the INDUSTRI developed advertisement ideas on billboards for Towne Club soda.

COUNT I - VIOLATION OF COPYRIGHT

12. Plaintiff hereby incorporates by reference, paragraphs 1 through 11, as if they were specifically repeated paragraph by paragraph and word for word.

13. Plaintiff, INDUSTRI, by and through its employees, designed and authored original works consisting of graphic billboard designs depicting the Towne Club soda bottle at various Detroit landmarks.

14. Plaintiff automatically obtained a copyright in its original graphical designs and work by virtue of its creation of the work and publishing it on paper.

15. Defendant, INTRASTATE DISTRIBUTORS, INC., took the original, authored works of Plaintiff, INDUSTRI, and reproduced them in Defendant's billboard advertising campaign without Plaintiff's authorization and without compensation.

16. Defendant's unauthorized reproduction of Plaintiff's original graphical designs and work constitutes infringement of Plaintiff's copyright pursuant to 17 USC § 501.

17. Plaintiff has been damaged by Defendant's unauthorized reproduction of Plaintiff's original graphic designs and work product as a result thereof.

WHEREFORE, Plaintiff, DECERCHIO, LLC, d/b/a INDUSTRI, respectfully requests that this Court enter a judgment in its favor and against Defendants in excess of \$25,000.00, remedies as provided under 17 USC § 504, and such other relief as this Court deems just and equitable.

COUNT II - UNJUST ENRICHMENT

18. Plaintiff hereby incorporates by reference, paragraphs 1 through 17, as if they were specifically repeated paragraph by paragraph and word for word.

19. Between May 7, 2014, and July 14, 2014, Plaintiff INDUSTRI, by and through its employees, expended time and resources to develop an advertising campaign proposed for Defendant, INTRASTATE DISTRIBUTORS, INC., at the request of Tim Dabish, which included the billboard advertisements for Towne Club.

20. At some point thereafter, and first discovered by Plaintiff, INDUSTRI, beginning in May 2016, Defendant, INTRASTATE DISTRIBUTORS, INC., began using the graphic designs, and advertising campaign that was thought up, developed, and put onto paper and/or other tangible format by Plaintiff, INDUSTRI, without authorization from Plaintiff.

21. To date, Plaintiff, INDUSTRI, has never received any monetary compensation for the billboard advertisement designs or the time and effort that they put into creating the designs.

22. Defendant, INTRASTATE DISTRIBUTORS, INC., received a benefit from Plaintiff, INDUSTRI's time, money, and efforts spent developing a billboard advertising campaign, which Defendant has now used without authorization and without providing any compensation to INDUSTRI for the same.

23. Defendant, INTRASTATE DISTRIBUTORS, INC.'s, retention of this benefit is inequitable to Plaintiff, INDUSTRI, as Plaintiff provided an advertising campaign to Defendant that Defendant has used without providing Plaintiff, INDUSTRI, any compensation.

24. Defendant, INTRASTATE DISTRIBUTORS, INC., has been unjustly enriched by their unauthorized use and reproduction of the billboard advertisement designs created by Plaintiff, INDUSTRI, without any compensation for the same.

WHEREFORE, Plaintiff, DECERCHIO, LLC, d/b/a INDUSTRI, respectfully requests that this Court enter a judgment in its favor and against Defendants in excess of \$25,000.00, and such other relief as this Court deems just and equitable.

COUNT III - COMMON LAW MISAPPROPRIATION

25. Plaintiff hereby incorporates by reference, paragraphs 1 through 24, as if they were specifically repeated paragraph by paragraph and word for word.

26. Plaintiff, INDUSTRI, made a substantial investment of time, effort, and money into creating the graphic billboard advertisements.

27. Defendant has misappropriated the graphic billboard advertisements, at no cost, as it never compensated Plaintiff for its work.

28. Plaintiff, INDUSTRI, has been injured by Defendant's misappropriation of its work-product.

WHEREFORE, Plaintiff, DECERCHIO, LLC, d/b/a INDUSTRI, respectfully requests that this Court enter a judgment in its favor and against Defendants in excess of \$25,000.00, and such other relief as this Court deems just and equitable.

DEMAND FOR JURY

NOW COMES Plaintiff, DECERCHIO, LLC, d/b/a INDUSTRI, by and through its attorneys, **kallas & henk pc**, and hereby demands a trial by jury of the above cause of action.

Respectfully submitted,

kallas & henk pc

/s/ Constantine N. Kallas
Constantine N. Kallas P28532
Joseph Fazi P73143
Attorney for Plaintiff
43902 Woodward Ave., Ste. 200
Bloomfield Hills MI 48302
(248) 335-5450 ext. 201

Dated: July 13, 2016